

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No.: 22-cv-22538-ALTMAN/REID

DOMINIK KARNAS, *et al.*,

Plaintiffs,

v.

MARK CUBAN, *et al.*,

Defendants.

/

**DEFENDANTS MARK CUBAN’S AND DALLAS MAVERICKS LIMITED d/b/a
DALLAS MAVERICKS’ RESPONSE TO PLAINTIFFS’ NOTICE OF SUPPLEMENTAL
AUTHORITY [ECF NO. 225] REGARDING DEFENDANTS’ OMNIBUS MOTION TO
DISMISS THE SECOND AMENDED COMPLAINT [ECF NO. 189]**

Pursuant to S.D. Fla. Local Rule 7.8, Defendants MARK CUBAN and DALLAS MAVERICKS LIMITED d/b/a DALLAS MAVERICKS respond to Plaintiffs’ Notice of Supplemental Authority [ECF No. 225] concerning an order from the District Court for the Southern District of Florida in *Securities and Exchange Commission v. Arbitrade Ltd., et al.*, No. 1:22-cv-23171-BB, ECF No. 115 (S.D. Fla. March 6, 2024) (“*Arbitrade*”) as follows:

In *Arbitrade* the SEC alleges that defendants engaged in a “pump and dump scheme” involving a crypto asset called DIG that was falsely held out as redeemable for gold. Plaintiffs here declined to cite the prior motion to dismiss decision in *Arbitrade* in their Opposition to Defendants’ Motion to Dismiss, and the instant decision in *Arbitrade* denying a motion for reconsideration or certification for interlocutory appeal also does not control the issues pending in this matter. The court in *Arbitrade* declined to reconsider its denial of Defendant Goldberg’s motion to dismiss in part because he moved to dismiss “for lack of subject matter jurisdiction,” but did “not attempt to apply the *Howey* test to the DIG scheme alleged in the Complaint nor [did] Goldberg specify which element of the *Howey* test is not satisfied.” *Arbitrade* at 5-7. As to an interlocutory appeal, the

Arbitrade court also denied it, concluding that, among other things, “this Court’s Order, *Ripple I* and *Terraform* each reasonably applied *Howey* to the particular facts—or allegations—of each case.” *Id.* at 22. Neither conclusion affects the issues in the pending Motion to Dismiss in this case, and therefore this *Arbitrade* decision deserves no weight as well.

Date: March 15, 2024

Respectfully submitted,

/s/ Christopher E. Knight

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CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2024, the foregoing document was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via the Court's CM/ECF which will send notification of such filing to all attorneys of record.

/s/ Christopher E. Knight

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